

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

UNITED STATES OF AMERICA,)
)
)
v.) Case No.4:18CR00012
)
)
JALEN CORMARRIUS TERRY,)
)
)
Defendant.)

**DEFENDANT JALEN CORMARRIUS TERRY'S MOTION
TO DISMISS COUNTS FIVE AND NINE OF INDICTMENT**

Now comes Defendant Jalen Cormarrius Terry (“Terry”), pursuant to Rule 12(b)(3) of the Federal Rules of Criminal Procedure and other applicable law, and moves the Court to dismiss Counts Five and Nine of the Indictment (ECF 5) on the grounds that follow.

In Counts Five and Nine of the Indictment Terry and others are charged with using a firearm during a “crime of violence” in violation of 18 U.S.C. § 924(c)(1)(A). The purported “crime of violence” underlying the Section 924(c) charges in Counts Five and Nine is commission of a violent act in aid of racketeering under 18 U.S.C. § 1959(a)(3). Both Counts Five and Nine incorporate and are based upon VA. CODE ANN. § 18.2-282. As explained in Terry’s supporting memorandum, Section 1959(a)(3) does not qualify as a cognizable “crime of violence” within the meaning of 18 U.S.C. § 924(c)(1)(A) because 18 VA. CODE ANN. § 18.2-282 itself is not categorically a “crime of violence.”

Wherefore, Counts Five and Nine of the Indictment should be dismissed for failure to state an offense under 18 U.S.C. § 924(c).

JALEN CORMARRIUS TERRY

By: s/Paul G. Beers
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Certificate of Service

I hereby certify that on January 25, 2019, I electronically filed the foregoing Defendant Jalen Cormarrius Terry's Motion to Dismiss Counts Five and Nine of Indictment with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Ronald M. Huber, Esq., Managing Assistant United States Attorney, United States Attorney's Office, 255 West Main Street, Charlottesville, Virginia 22902, and to Heather L. Carlton, Esq., Assistant United States Attorney, United States Attorney's Office, 255 West Main Street, Charlottesville, Virginia 22902.

s/Paul G. Beers
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